

**REMARKS**

**I. Claim Status**

Claims 1-117 are pending. Without prejudice or disclaimer, claims 25-78 and 108-117 are withdrawn as non-elected in response to the Office Action (Restriction/Election Requirement) of December 14, 2006. No claims are amended herein. Accordingly, no new matter has been added.

**II. Priority**

The Examiner notes that the cover letters included with the certified English translations of the provisional applications from which the present application claims benefit of priority do not include the provisional application numbers. See Aug. 27, 2008, Final Office Action at 2. Accordingly, Applicants re-submit herewith certified English translations, with new cover letters, of U.S. Provisional Application No. 60/412,853, filed September 24, 2002; U.S. Provisional Application No. 60/418,345, filed October 16, 2002; U.S. Provisional Application No. 60/418,357, filed October 16, 2002; U.S. Provisional Application No. 60/412,854, filed October 16, 2002; and U.S. Provisional Application No. 60/412,855, filed October 16, 2002, from which U.S. Patent Application No. 10/654,907 claims priority. The cover letters of the translated provisional applications submitted herewith include the provisional application numbers.

Furthermore, Applicants wish to point out that this application also claims the benefit of the filing date of French Patent Application No. 02 11096, filed September 6, 2002; French Patent Application No. 02 11097, filed September 6, 2002; French Patent Application No. 02 11104, filed September 6, 2002; French Patent Application No. 02

12097, filed September 30, 2002; and French Patent Application No. 02 12098, filed September 30, 2002 (collectively, "French priority documents"), as demonstrated by the submissions on September 5, 2003 (Applicants submitted a Claim for Priority to these French priority documents, and also submitted certified copies of the French priority documents). To date, the Examiner has not acknowledged receipt of the certified French priority documents. Thus, Applicants respectfully request that the Examiner acknowledge receipt of the certified French priority documents in the next paper from the Office.

### **III. Rejection Under 35 U.S.C. § 102**

The Examiner maintains the rejection of claims 1-24, 85-100, and 102-107 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,875,245 to Pavlin ("Pavlin"). See Aug. 27, 2008, Final Office Action at 2-4.

Applicants respectfully traverse for the reasons of record and for at least the following reason.

Applicants argued in their prior response that the Examiner's reliance on Pavlin as § 102(e) prior art to the instant application is misplaced because Applicants' effective date of invention is no later than September 30, 2002, based on the French applications, or, in the alternative, no later than October 16, 2002, based on the U.S. provisional applications.<sup>1</sup>

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<sup>1</sup> The Examiner is not giving Applicants the benefit of the French priority applications because the documentation is in French. Now that Applicants have submitted translations of the provisional applications with cover sheets containing the application numbers, Applicants expect the Examiner to accord the benefit of the provisional applications, i.e., October 16, 2002. Since the filing date of October 16, 2002, is early

As Applicants noted in their prior response, Pavlin was filed April 22, 2003, and published April 5, 2005. Pavlin is a continuation-in-part of U.S. Patent No. 6,552,160 (“the ‘160 patent”), filed on May 14, 2001. However, the subject matter used in the Examiner’s rejection was not disclosed in the ‘160 patent. Specifically, the Examiner relies on Table 15 of Pavlin for the § 102(e) rejection (see Feb. 26, 2008, Office Action at 4-5), but this subject matter is not disclosed in the ‘160 patent. Thus, Pavlin’s effective filing date is April 22, 2003, for purposes of the Examiner’s § 102(e) rejection. Thus, the May 14, 2001, filing date cannot be relied upon for purposes of § 102(e) See M.P.E.P. § 2136.04(IV) (“[T]he subject matter used in the rejection must be disclosed in the earlier-filed application in compliance with 35 U.S.C. 112, first paragraph, in order for that subject matter to be entitled to the earlier filing date under 35 U.S.C. 102(e).”).

Because Pavlin’s effective filing date is April 22, 2003, for purposes of the Examiner’s rejection, and Applicants’ current effective date is no later than October 16, 2002 (filing date of the provisional applications), Pavlin is not § 102(e) prior art to the instant application.<sup>2</sup>

In response to this argument, the Examiner acknowledges that the filing date of Pavlin is April 22, 2003, but states that the filing date of the instant application is

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enough to remove the § 102(e) rejection, Applicants will not submit certified translations of the French priority documents at this time. However, Applicants reserve the right to submit any and all translations at any time.

<sup>2</sup> Section 102(e)(2) states: “A person shall be entitled to a patent unless - . . . the invention was described in - . . . a patent granted on an application for patent by another filed in the United States before the invention by the application for patent.” (Emphasis added). In the present case, the effective invention date is the French priority date. However, as discussed above in footnote one, since the October 16, 2002, filing date of the provisional applications is early enough to remove the § 102(e) rejection, Applicants will not submit certified translations of the French priority documents at this time.

September 5, 2003, because, *inter alia*, Applicants are not accorded benefit of the provisional applications to which the instant application claims priority since the cover pages of the certified English translations “do not identify the provisional application” numbers. Aug. 27, 2008, Final Office Action at 4. Applicants, therefore, resubmit herewith certified English translations of the provisional applications together with cover pages that identify their provisional application numbers. Accordingly, Applicants respectfully submit that the rejection should be withdrawn because Applicants’ effective invention date is no later than October 16, 2002, and, therefore, Pavlin is not § 102(e) prior art to the instant application.

#### **IV. Rejection Under 35 U.S.C. § 103**

The Examiner maintains the rejection of claims 1-24 and 79-107 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Pavlin. See Aug. 27, 2008, Final Office Action at 4-6.

Applicants respectfully traverse for the reasons of record and for at least the following reason.

As Applicants noted in their prior response and discussed above, the Examiner’s reliance on Pavlin as prior art is misplaced. For art to be relied upon under 35 U.S.C. § 103 as the basis for an obviousness rejection, the art must first qualify as prior art under the definition of 35 U.S.C. § 102. Here, however, for the reasons discussed above, Pavlin is not prior art under § 102(e), or any other section of § 102.

In response to this argument, the Examiner acknowledges that the filing date of Pavlin is April 22, 2003, but states that the filing date of the instant application is

September 5, 2003, because, *inter alia*, Applicants are not accorded benefit of the provisional applications to which the instant application claims priority since the cover pages of the certified English translations “do not identify the provisional application” numbers. Aug. 27, 2008, Final Office Action at 5-6. As discussed above, Applicants resubmit herewith certified English translations of the provisional applications together with cover pages that identify their provisional application numbers. Pavlin, therefore, is not prior art to the instant application and the Examiner cannot rely upon it to support the pending § 103 rejection. Accordingly, Applicants respectfully submit that the rejection is in error and should be withdrawn.

### CONCLUSION

Applicants respectfully request that this response be entered by the Examiner, placing claims 1-24 and 79-107 in condition for allowance. Applicants, therefore, request the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

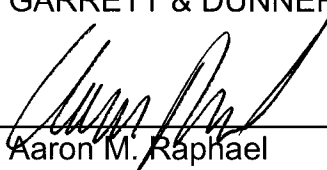
If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: November 3, 2008

By: \_\_\_\_\_

  
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**ATTACHMENTS:** Certified English translations of U.S. Provisional Application No. 60/412,853, filed September 24, 2002; U.S. Provisional Application No. 60/418,345, filed October 16, 2002; U.S. Provisional Application No. 60/418,357, filed October 16, 2002; U.S. Provisional Application No. 60/412,854, filed October 16, 2002; and U.S. Provisional Application No. 60/412,855, filed October 16, 2002.